SUPREME COURT OF THE UNITED STATES.

No. 126.

AMEDEE MENARD'S HEIRS, DEMANDANTS, PLAINTIFFS IN ERROR,

vs.

SAMUEL MASSEY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Declaration	1	3
Summons	2	4
Marshal's return	2	4
Plea	2	4
Suggestion of plaintiff's death	2	4
Substitution of heirs	3	5
Trial, verdict, and judgment	3	5
Bill of exceptions	3	6
Plaintiff's evidence.		
Petition of Pascal L. Cerré	4	6
Concession	4	6
Gayoso's letter to Gabriel Cerré	5	7
Proceedings of Commissioners	6	8
Testimony of Antoine Soulard	6	8
Testimony of M. P. Leduc	6	9
Confirmation by Commissioners	7	9
Description of survey	7	10
Plat	8	10
Testimony of J. B. Brinker	11	13
Testimony of Levi Snelson	13	14
Testimony of Joseph C. Brown	13	15
Instructions to deputy surveyors	14	16
Testimony of A. H. Evans	28	29
Testimony of H. A. Massey	28	29
Admission of defendant's possession	28	29

J. & G. S. Gideon, printers.

	Original.	Print.
Plat and certificate from Register's office	29	29
Deed of P. L. Cerré and others to Amedee Menard	30	31
Statement of Judge Pope	32	32
Letter of the Secretary of the Treasury to the Commissioner of the General Land Office	32	32
Extract from list of claims	33	33
Defendant's evidence.		
Patents from the United States	33	34
Instructions	36	40
Bond	00	40
Writ of error	40	41
Citation	41	42
Clerk's certificate	42	42
Assignment of errors	43	42

MISSOURI DISTRICT, *Sct*:

THE HEIRS OF AMEDEE MENARD,
vs.
SAMUEL MASSEY.

Be it remembered that heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and forty-four, Amedee Menard, a citizen of the State of Illinois, in his life time, by Mr. Darby, his attorney, filed in the office of the clerk of the circuit court of the United States, for the district of Missouri, his declaration in an action of trespass and ejectment against Samuel Massey, a citizen of the State of Missouri, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *State of Missouri, Ss:*

In the United States circuit court, for the Missouri district, April term, 1844.

Declaration.

Amedee Menard, a citizen of the State of Illinois, by Darby, his attorney, complains of Samuel Massey, a citizen of the State of Missouri, of a plea of trespass and ejectment. For that, whereas the said plaintiff was, on the twenty-fourth day of February, in the year of our Lord eighteen hundred and forty-four, legally entitled to the possession of a certain tract, piece, or parcel of land, situate, lying, and being in the county of Crawford, and State of Missouri, containing three thousand and one acres, and twenty-five hundredths of an acre, being survey number three thousand one hundred and twenty, of three thousand five hundred and twenty-eight arpens of land originally granted to Pascal L. Cerré, in township thirty-eight north, of range five west, and townships thirty-seven and thirty-eight north, of range six west, of the fifth principal meridian; and is the same tract of land which was acquired by said Amedee Menard from Pascal L. Cerré, Michael S. Cerré, Pierre D. Papin, and Luke E. Lawless, by deed bearing date the twenty-first day of February, eighteen hundred and forty-four; and that he, said Amedee Menard, being so entitled to the possession thereof, he, the said Samuel Massey, entered into and upon said land and premises on the twenty-fourth day of February, eighteen hundred and forty-four, and unlawfully withholds from the plaintiff the possession thereof, to the damage of the said plaintiff of thirty thousand dollars; and therefore he brings his suit.

On which declaration is the following endorsement: This is an action of trespass and ejectment; damage $30,000; issue a summons.

DARBY, *Attorney for plaintiff.*

And thereupon, on the day of the filing of said declaration, a writ of summons issued out of the office of the clerk of said circuit court, in tenor and form following, to wit:

MISSOURI DISTRICT, *Set:*

Summons.

The President of the United States, to the marshal of the Missouri district, greeting.

You are hereby commanded to summon Samuel Massey, a citizen of the State of Missouri, that he be and appear before the circuit court of the United States for the district of Missouri at the next term thereof, to be held at the city of St. Louis, within and for said district, on the first Monday of April next, then and there to answer unto Amedee Menard, a citizen of the State of Illinois, of a plea of trespass and ejectment, to the damage of said plaintiff of thirty thousand dollars. Hereof fail not, and have you then there this writ.

Witness, the honorable Roger B. Taney, chief justice of the United States, the twenty-fourth day of February, eighteen hun-
[L. S.] dred and forty-four. Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk*.

Which said writ was duly returned to the marshal, to whom the same was directed, with his return thereto in the words following, to wit:

Return.

I hereby certify to the honorable circuit court within mentioned, that I executed the within writ, by deliverng a true and perfect copy of the within declaration and writ to Mary Massey, the wife and white member of the family of the within named Samuel Massey, over the age of fifteen years, at the usual place of abode of the within named Samuel Massey, in Crawford county, Missouri district, on the 9th of March, 1844.

WESTON F. BIRCH, *Marshal*,
By RICHM'D J. CURLE, *Deputy Marshal*.

And afterwards, at the April term of said court, in the year aforesaid, the said defendant, by Messrs. Gamble and Bates, his attorneys, appeared and filed his plea to said action as follows, to wit:

Plea.

And the said Samuel Massey comes and defends the force and injury, when, &c., and says that he is not guilty of the trespasses, wrongs, and grievances above laid to his charge, in manner and form as the said Amedee Menard, the plaintiff, has above in declaring alleged, and of this he puts himself upon his country. And the plaintiff doth the like.

And this cause was afterwards continued until the April term of said court, in the year one thousand eight hundred and forty-five, at which term, in the record of proceedings of said court, are the following entries:

Monday, 7th April, 1845.

AMEDEE MENARD, }
vs. }
SAMUEL MASSEY. }

Suggestion of death of plaintiff.

Now, at this day comes the attorney for the plaintiff, and suggests to

the court here that since the last continuance of this cause the said Amedee Menard hath departed this life, which is not denied, but admitted to be true.

Heirs substituted plaintiffs.

Friday, 18*th April*, 1845.

AMEDEE MENARD
vs.
SAMUEL MASSEY.

Now, at this day, come Audille Maxwell, Peter Menard, Berenice Chouteau, George H. Kennerly and Alsire his wife, Edmund Menard, Lancier Menard, Cyprien Menard, John Radford and Sophie his wife, being all citizens of the State of Illinois, by Mr. Darby, their attorney, and pray the court that they may be substituted as plaintiffs in this action, as the heirs and legal representatives of the said Amedee Menard, deceased. Whereupon, it is ordered by the court that the said heirs and legal representatives of the said Amedee Menard, deceased, be substituted as plaintiffs in this cause, and that they be permitted to prosecute of and upon the premises in the plea aforesaid. And this cause was continued by consent of the parties.

And afterwards, to wit, at the April term of said court, in the year one thousand eight hundred and forty-six, in the record of proceedings thereof is the following entry, to wit:

Trial—Verdict—Judgment.

Thursday, 16*th April*, 1846.

THE HEIRS OF AMEDEE MENARD
vs.
SAMUEL MASSEY.

This day come again the parties aforesaid, by their respective attorneys, and thereupon also come a jury, to wit: Anderson Martin, William M. Jacobs, Luther F. Warder, George M. Butler, Frederick Branstetter, Edward A. Lewis, William B. Hudgins, Thomas P. Ruby, Thomas J. Simpson, Vachel Burgess, William Lennox, Benjamin F. Smith, twelve good and lawful men, who, being duly elected, tried, and sworn well and truly to try the issue within joined between the parties aforesaid, upon their oaths do say, that the said defendant is not guilty of the trespass and ejectment in the declaration mentioned, in manner and form as the said plaintiffs have in declaring against him alleged. It is therefore considered by the court here, that the said plaintiffs take nothing by their said writ, and that the said defendant go thereof without day. And it is further considered that the said Samuel Massey recover against the said Audille Maxwell, Peter Menard, Berenice Chouteau, George H. Kennerly and Alsire his wife, Edmund Menard, Lancier Menard, Cyprien Menard, John Radford and Sophie his wife, his costs and charges by him about his defence in this behalf expended, and that he have thereof execution.

And afterwards, at the same term of said court, on the 25th day of

April, in the year last aforesaid, the said plaintiffs, by their attorney, filed their bill of exceptions in the words and figures following, to wit:

Bill of Exceptions.—Plaintiffs' evidence.

Be it remembered, that on the trial of this cause the plaintiffs read in evidence the following documentary evidence, to wit: the following petition, concession, and confirmation, being a transcript from the records of the recorder of land titles of the United States in Missouri. CLAIMS.—Pascal L. Cerré claims 7056 arpens of land situate in the territory of Louisiana, granted to him the 9th of November, 1799, by Carlos Dehault Delassus. (See book B, page 512.)

Petition.

Pascal Cerré's petition and concession. To Don Charles Dehault Delassus, lieutenant colonel attached to the stationary regiment of Louisiana, and lieutenant governor of the upper part of the same province.

Pascal Leon Cerré, sub-lieutenant of militia, father of a family and owner of several slaves, has the honor of representing to you, that having obtained yet no concessions, he would desire to enjoy the same favor as all the other inhabitants of the country, and participate in the bounties which his Majesty diffuses with generosity amongst all his subjects; consequently, and as owner of a great quantity of cattle, he would wish to establish a considerable stock farm, distant enough from our settlements not to give umbrage to any body. To obtain his object, he has the honor humbly to pray that you will have the goodness to grant to him, in full property, a league square of land in superficie, or seven thousand and fifty-six arpents, to be taken in two different places, situated as follows: the half of said quantity, or three thousand five hundred and twenty-eight arpens, to be taken at the place commonly known by the name of the great source of the river Maramee, at about three hundred miles from its mouth, so as to include the said sources; the other half, or three thousand five hundred and twenty-eight arpens, at some distance from the first, at the upper part of the head waters of the Gasconade, and of those of the fork of the Maramee, known by the name of La Bourbeuse, (Muddy.) The said tracts of land being only fit for the establishments projected by your petitioner, who hopes his fidelity, and that of all his family to the government, will be titles in your opinion, which will contribute to the fulfilment of the favor which he hopes to obtain of your goodness and justice.

P. L. CERRE.

ST. LOUIS OF ILLINOIS, *November* 5, 1799

A true translation. JULIUS DE MUN.

Concession.

St Louis of Illinois, November 8, 1799.

Whereas the petitioner is one of the most ancient inhabitants of this country, whose known conduct and personal qualities are recommendable, and being convinced of the truth of what he exposes in his petition, I do grant to the petitioner the land which he solicits; and as it is situated

in a desert where there is no settlement, and at a considerable distance from this town, he is not compelled to have it surveyed immediately, but as soon as some one settles on said place, in which case he must have it surveyed without delay; and Don Antonio Soulard, surveyor general of this upper Louisiana, will take cognizance of this title for his own intelligence and government in the part which concerns him, so as to enable the interested, after the survey is executed, to solicit the title in due form from the intendant general of these provinces of Louisiana. CARLOS DEHAULT DELASSUS.

Registered by order of the lieutenant governor, pages 15 and 16 of book No. 1, titles of concessions, Soulard; see book B, pages 512 and 513, copied from original on file.

Gayoso's letter to Gabriel Cerré.

NEW ORLEANS, *April* 25, 1798.

SIR: Your letter of the 7th of last March, has been delivered to me. Yes, sir, it is with pleasure that I have learnt, by the letter which you have written to Mr. Zenon Trudeau, on the subject of your journey to Canada, which letter has been forwarded to me, that you had returned to St. Louis. No one better than myself can feel how many inconveniences you must have experienced in this journey, and how many difficulties you had to surmount, and that it required nothing less than your intelligence and knowledge, your activity, firmness, and courage to extricate you from the embarrassments into which your zeal for the service of the King and your attachment to our government precipitated you; penetrated with this conviction, and knowing how to appreciate your merit, your uncommon disinterestedness, and the services which you have rendered, and which I am persuaded you will always be disposed to render to the King, you will find me at all times ready to seize the occasions of testifying to you how much I do desire to be of some utility to you, and making it available in case of need. With respect to the affair between you and Mr. Lorimer, of which a statement has been submitted to me by Mr. Zenon Trudeau, it is with very sensible pain that I see myself compelled to announce to you that my judgment upon it will not be, perhaps, exactly conformable to your wishes. The immutable principles of justice, whatever may be the interest I take in you in my inward thoughts, does not permit me to pronounce a decision different from that which will be officially communicated to you by the lieutenant governor, Don Zenon Trudeau. You have too sound an understanding, and too much discernment, not to comprehend that a public man ought never to suffer his affections, or his feelings of private friendship, to make him deviate from the path which his reason points out to him as that of equity and impartiality. On all other occasions put my friendship to the test, and reckon on the attachment of him who has the honor to be, with all the consideration which is due to you on so many accounts,

Sir, your very humble, and very obedient servant,

MANUEL GAYOSO DE LEMOS.

MONSIEUR GABRIEL CERRE.

A true translation—copied from original on file.

JULIUS DE MUN.

No.	Name of original claimant.	Quantity arps.	Nature and date of claim.	By whom granted.	By whom surveyed, date, and situation.
2	Pascal L. Cerré.	7,056	Concession dated 8th November, 1799.	Charles Dehault De Lassus.	To be surveyed in two parts, or halves, the one on the big spring of the river Maramee, so as to include said spring, and the other at the fall of the forks of the Gasconade and those of the Maramee, called the Muddy.

Evidence with reference to the minutes and records.

Proceedings of commissioners.

September 15, 1806. Pascal L. Cerré, claiming a tract of a league square, to be surveyed in two parts or halves, the one on the big spring of the river Maramee, so as to include said spring, and the other at the fall of the forks of the Gasconade and those of the Maramee, called the Muddy, produces a concession from Charles Dehault Delassus, dated 8th November, 1799.

Testimony of Soulard.

Anthony Soulard being duly sworn, says, that he wrote the aforesaid concession, or decree, of the lieutenant governor, but does not recollect if it was issued at the time it bears date; that a letter was addressed to Gabriel Cerré, the father of claimant, by the governor general, Gayoso De Lemos, dated "April 25th, 1798," wherein he acknowledges the many services he has rendered to government, and his claim to the generosity of the same; that the lieutenant governor seeing said letter, enquired of him in what manner he might reward him; that the said Gabriel Cerré replied, that he was already advanced in years, and did not want for lands, having already a sufficiency of the same, but recommended his son, the claimant, who had not then received any grant for land, to the bounty of the government; and further, that said claimant was in the year '98 the head of a family. See minutes No. 2, pages 30 and 31.

Thursday, September 28th, 1810. Board met; present, John B. C. Lucas and Clement B. Penrose, commissioners; Pascal L. Cerré, claiming one league square of land. See book No. 2, page 30. It is the opinion of this board that this claim ought not to be confirmed. See book No. 4, pages 513, 516, and 517. Board adjourned until Monday next, three o'clock, P. M.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE.

Friday, October 5, 1832. The board met; present, L. F. Linn and F. R. Conway; Pascal L. Cerré, claiming a tract of land of a league square, to be surveyed, &c. See book No. 2, page 30; book No. 4, 516; recorded book B, pages 512 and 513.

Testimony of Le Duc.

M. P. Leduc being duly sworn, saith, that the signature to the petition is the handwriting of the claimant, and that the signature to the concession is the handwriting of Carlos Dehault Delassus. The claimant also produces a paper, purporting to be an original letter from Gayoso De Lemos, late governor of Louisiana, bearing date the 25th day of April, 1798; M. P. Leduc saith, that the signature to the said letter is the handwriting of said Gayoso De Lemos. See book No. 6, page 3. The board adjourned until to-morrow, 10 o'clock, A. M.

L. F. LINN,
F. R. CONWAY.

See book No. 6, pages 2, 3, and 8.

Confirmation by commissioners.

Thursday, October 31st, 1833.

The board met pursuant to adjournment. Present, L. F. Linn, A. G. Harrison, and F. R. Conway, commissioners; Pascal L. Cerré, claiming 7,056 arpens of land, see page 3 of this book. The board are unanimously of the opinion that this claim ought to be confirmed to said Pascal L. Cerré, or to his legal representatives, according to the concession. The board adjourned till to-morrow at 9 o'clock, A. M. See book No. 6—page 286, 287, and 288.

L. F. LINN,
F. R. CONWAY,
A. G. HARRISON.

RECORDER'S OFFICE, *St. Louis, Missouri, April 10th*, 1845.

I certify that the foregoing is a full and correct transcript of all that appears on file or of record in this office, so far as I have been able to ascertain, which relates to the claim of Pascal L. Cerré, to the land therein mentioned and described.

F. R. CONWAY,
U. S. Recorder of land titles in the State of Missouri.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri, 10th April, 1845.

I, F. R. Conway, U. S. recorder of land titles in the State of Missouri, do hereby certify, that the foregoing embraces a full and complete transcript from the book and documents on file in this office, as far as I have been able to ascertain, in relation to the claims of Pascal L. Cerré for 7,056 arpens of land therein described. That the said claim was recommended for confirmation by the recorder of land titles in the State of Missouri, and the two commissioners associated with him, under the provisions of the act of Congress of the 9th of July, 1832, enti-

tled "an act for the final adjustment of private land claims in Missouri," and the act supplemental thereto, of the 2d March, 1833, in their report to the commissioner of the general land office of the 27th November, 1833, and numbered in said report two, (2) which report was confirmed by act of Congress of the 4th of July, 1836, remaining on file in my office, as far as said report relates to the claim of Pascal L. Cerré for the 7,056 arpens aforesaid. F. R. CONWAY,

U. S. Recorder of land titles in the State of Missouri.

The plaintiff read in evidence, also, the following plat and survey, marked A No. 1, being survey No. 3120, and certified, Surveyor's office, Saint Louis, 11th of April, 1846, by F. R. Conway, surveyor of the public lands in the States of Illinois and Missouri. Survey, No. 3120.

Description of Survey.

Plat and description of the survey of a tract of 3528 French arpents, equal to $3001\frac{25}{100}$ English acres of land, situated in township 38 north, range 5 west; and townships 37 & 38 north of the base line, range 6 west of the 5 principal meridian, in the State of Missouri; executed from the 18th to the 20th of June, 1838, by Joseph C. Brown, deputy surveyor, under instructions from the surveyor of the public lands in the States of Illinois and Missouri, dated the 6th of June, 1838; it being the one half of 7,056 arpents, or a league square, granted in two tracts of equal quantity, on the 8th of November, 1799, to Pascal L. Cerré by Zenon Trudeau, lieutenant governor of the Spanish province of upper Louisiana; this tract "to be taken at the place commonly known by the name of the great source of the river Maramee, at about three hundred miles from its mouth, so as to include the said sources." And confirmed to Pascal L. Cerré by the act of Congress of the U. States, approved on the 4th of July, 1836, entitled "an act confirming claims to land in the State of Missouri, and for other purposes," according to the decision, No. 2, of the report of the board of commissioners appointed by the act of Congress approved on the 9th of July, 1832, entitled "an act for the final adjustment of private land claims in Missouri, and the act of Congress approved the 2d of March, 1833, supplemental thereto.

T. 37 N., R. 6 W., and T. 38 N., Rs. 5 & 6 W., of the 5th pl. M.

[For plat, see original.]

Description.

Begin at a sand stone 16 inches long, 13 inches wide, and $3\frac{1}{2}$ inches thick, the south-east corner of sec. 32, and a corner of this survey, from which a hickory, 8 inches in diameter, bears N. 22° E., 15 links distant; and a white oak, 24 inches in diameter, bears N. 87° W., 33 links distant. Thence S. $89\frac{1}{2}$° W., along the south boundary of township 38, range 5 west; at 39.92 chains, the quarter section corner; at 79.85 chains, the corner to sections 31 and 32; at 120.20 chains, the quarter section

corner; at 161.92 chains, the corner to townships 37 and 38, ranges 5 and 6 west, and a corner to this survey, a post, from which a white, 20 inches in diameter, bears N. 5 E. 27 links distant; and a white oak, 17 inches in diameter, bears S. 14° E. 37 links distant.

Thence S. ½° W., with the line between ranges 5 and 6 west; at 15 chains, the foot of hills bearing east and westward; at 16.24 chains, the right bank of the Maramee river 70 links wide, bearing westward; at 25.00 chains, a field bearing eastward and westward; at 35 chains leave the field; at 40.04 chains, the quarter section corner on the east boundary of sec. 1, township 37, range 6 west; at 75.18 chains, the corner to sections 1 and 12 of same township, and corner to this survey, a flint stone 16 inches long, 7 inches thick, and 13 inches wide, set in a valley, from which a white oak, 12 inches in diameter, bears N. 78° W. 72 links distant, and a black oak, 10 inches in diameter, bears S. 36° W. 42 links distant.

Thence S. 87½° W., with the most southern line of this survey, and the line between sections 1 and 12, township 37, range 6 west; at 40.24 chains, the quarter section corner bears south 115 links; at 79.97 chains, the corner to sections 1, 2, 11 and 12, township 37, range 6 west, and a corner to this survey, a flint stone 14 inches long, 12 inches wide, and 8 inches thick, from which a black oak, 12 inches in diameter, bears S. 13 E. 39 links distant, and a post oak, 10 inches in diameter, bears N. 67 W. 43 links distant.

Thence N. ½° E., along the line between sections 1 and 2, township 37, range 6 west; at about 46.50 chains, iron ore is in abundance; at 80.33 chains, the corner to sections 1 and 2, T. 37, R 6, on the south boundary of T. 38, R. 6, and a corner to this survey, a sand stone 16 inches long, 16 inches wide, and 3½ inches thick; from which a white oak, 16 inches diameter, bears S. 79 E. 63 links distant, and a red oak, 8 inches diameter, bears S. 66¼ W. 124 links distant.

Thence east along the township line; at 8 links, the corner to sections 35 and 36, township 38, range 6, and a corner to this survey, a sand stone 16 inches long, 14 inches wide, and 3½ inches thick, from which a white oak, 6 inches in diameter, bears N. 16° W. 59 links distant, and a red oak, 8 inches in diameter, bears N. 28½° E. 65 links distant.

Thence N. 0° 20′ E., with the line between sections 35 and 36, township 38, range 6; at 40.10 chains, the quarter section corner; at 80.27 chains, the corner to sections 25 26, 35, and 36, then continue with the line between section 25 and 26; at 98.71 chains, the right bank *the right bank* of the dry fork of Maramee river, 142 links wide, running eastward; at 108.57 chains, a branch 10 links wide, running S. eastward; at 111.27 chains, leave said branch coming from N. westward; at 119.47 chains, a bluff rock at the foot of the hill; at 120.46 chains, the quarter section corner on the line between sections 25 and 26, and a corner to this survey, a sand stone 18 inches long, 14 inches wide, and 4 inches thick, from which a red oak, 16 inches in diameter, bears S. 7 E. 22 links distant, and a red oak, 16 inches in diameter, bears N. 26° W., 20 links distant.

Thence S. 88½ E., with the most northern line of this survey; at 35 links a post, 8 inches in diameter; at 72 links a red oak, 15 inches in diameter; at 4.00 chains enter bottom and leave the hills, bearing N. E. and S. W.; at 16.33 chains, a pond bearing N. E. and S. W.; at 17.50 chains, leave the pond; at 41.83 chains, an impassable wall of rock; at 42.49 chains, the top of the precipice bearing south-eastward and north-westward; at 79.38 chains, the quarter section corner on the east boundary of section 25, township 38, range 6 west, and a corner to this survey, it being two sand stones, one of which is 2 feet long, 16 inches wide, and 3 inches thick; and the other is 16 inches long, 13 inches wide, and 6 inches thick, from which a post oak, 9 inches diameter, bears S. 81° W., 40 links distant, and a white oak, 12 inches in diameter, bears N. 57° W., 47 links distant.

Thence south along the line between ranges 5 and 6 west: at 38.80 chains, the corner to sections 30 and 31, township 38, range 5, and a corner to this survey, a stone from which a white oak, 10 inches in diameter bears S. 47° E., 30 links distant, and a white oak, 9 inches diameter, bears N. 77 E., 37 links distant.

Thence S. 89° 49' E., with the line between sections 30 and 31, township 38, range 5; at 40 chains and 50 links, the quarter section corner; at 61.10 chains, leave the hill and enter bottom, bearing S. W. and S. E.; at 80.52 chains, the corner to sections 19, 20, 29 and 30, township 38. range 5 west; then continue with the line between sections 29 and 32; at 97.52 chains, leave the bottom and begin to ascend the hill, bearing S. E. and N. W.; at 104.52 chains, the top of the hill; at 120.76 chains, the quarter section corner, and a corner to this survey, a sand stone 15 inches long, 14 inches wide, and 5 inches thick, from which a white oak, 14 inches in diameter, bears S. 38° E. 36 links, and a white oak, 30 inches, bears N. 65 W. 28 links distant.

Thence north at 9.22 chains, a burr oak, 36 inches in diameter; at 13.15 chains, a Spanish oak, 20 inches diameter; at 13.70 chains, a branch, 8 links wide, bears S. eastward, 35.50 chains, to a sand stone 22 inches long, 14 inches wide, and 4 inches thick, a corner to this survey, from which a white oak, 12 inches in diameter, bears N. 61 E. 40 links distant, and a white oak, 10 inches in diameter, bears S. 53½ E. 47 links distant.

Thence east at 3.95 chains, a white oak, 30 inches in diameter; at 4.96 chains, a Spanish oak 20 inches in diameter; at 5 chains a branch, 3 links wide, runs S. eastward; at 20 chains, the left bank of the river Maramee (the line crosses the river, but continues very near the bank for a few chains, and recrosses it;) at 39.36 chains, the left bank of said river; at 40.86 chains, the line between sections 28 and 29, T. 38, R. 5 west, set a lime stone 15 inches long, 14 inches wide, and three inches thick for a corner to this survey; from which the corner to said sections, on the northern and left bank of the Maramee river, bears south 55 links distant, a sycamore, 16 inches in diameter, bears N. 83 W., 13 links distant, and a sycamore, 16 inches in diameter, bears S. 81¾ E. 52 links, and a sycamore, 14 inches diameter, bears S. 20 W. 15 links distant.

Thence south, with the line between sections 28 and 29, T. 38, R. 5 west; at 55 links, said fractional section corner on the left bank of Maramee river; at 3.78 chains, the fractional section corner on the right bank of said river; at 33.68 chains, a stone, corner to section 28, 29, 32 and 33, T. 38, range 5 west, then continue same course with the line between section 32 and 33; at 73.81 chains, the quarter section corner; at 113.89 chains, the beginning corner.

Surveyor's office, St. Louis, 11th of April, 1846.

The foregoing plat and description of survey No. 3120, of the claim confirmed to Pascal L. Cerré, or his legal representatives, as described in the caption thereto, are strictly conformable to the field notes thereof, on file in this office, which have been examined, and were approved, on the 26th of June, 1840, by William Melburn, then surveyor general of the public lands in the State of Illinois, and Missouri.

F. R. CONWAY,

Surveyor of the public lands in the States of Illinois and Missouri.

Testimony of J. B. Brinker.

The plaintiff then called one John B. Brinker, who testified that he lived in Crawford county, Missouri, and was well acquainted with Samuel Massey, the defendant in this suit, who lived in the same county with witness, and at the iron works, known as Massey and James' iron works, at the Big spring of the Meremack. Witness has been living there where he now lives about twelve years. The improvements made by Massey are on section one, of township number thirty-seven north, range six west, and principally or nearly all on the northwest quarter of said section of the plat, as now shown to witness, being the above plat and survey which witness *now held* in his hand, and from which he is testify, ing, and in which said quarter is the Big spring referred to. That east of said spring said Massey has some land enclosed, which is in meadow, and which enclosure witness supposes contains about one hundred and fifty acres; that there are no fences enclosing said iron works and buildings, but there are some lots enclosed by fences, also including a garden, about the dwelling of Mr. Massey, and the stables and out buildings about the premises. The principal enclosure of the meadow, witness supposes, would extend about a mile above the Big spring. The garden of Mr. Massey, he would suppose, would contain about one acre, or one acre and a half. Several years ago Mr. Massey had a corn field near the spring, containing about ten acres, it might be a little more or a little less; and two crops had been raised on this field since witness went there twelve years ago. Witness was [acquainted] with the place and premises, however, before he went there to live. That Massey had had timber cut on the land about the iron works, but the principal part of the timber was cut down the river, below the Big spring. A good deal of timber had been cut in the survey of Pascal L. Cerré, as marked down on the plat within the red lines. A good quantity of timber had also been cut on sections No. 31 and 32, as marked down on the plat before witness. This part of said tract, however, had never been enclosed.

Mr. Massey had his principal farm above three miles off, in a south west direction from the Big spring. The timber which had been cut, and of which witness spoke, was valuable and of excellent quality. The island, as marked down on said plat, had been stripped of nearly all the timber, which was by far the best timber; the best timber in that section of country was mostly along the river bottoms of the Merimack river. A good part of the timber used by Mr. Massey had been applied by him to building, and framing the buildings for the iron works, and the rolling mill attached to the same, and in making boards to be used about the place. The place would rent for more than a thousand dollars a year. Witness supposes iron ore had been got by Mr. Massey, which he used in manufacturing iron from at his works, on the land about five or six hundred yards from the works, where there was large beds of iron ore. The amount of iron made by Mr. Massey had been very considerable ; some years he had made more than ten thousand dollars' worth of iron. The iron works *were* not in operation *now*. The iron ore was obtained near the works, in a westerly direction from the works, which were below the Big spring, or perhaps a little north of west. The place would rent, with the improvements, for more than two hundred dollars a month ; say three or four thousand dollars per annum.

Witness being cross examined by the counsel for the defendant, stated further, that he was well acquainted with the country round the Big spring, he lived east of the river, below the Big spring. The Merimack river above the Big spring was a small stream, and continued some distance above the spring ; witness could not state the precise distance, but he supposed it extended some forty or fifty miles above the Big spring, and the land in that region was generally poor, save on the creek and river bottoms. The corn field, spoken of by witness, was in a southwardly direction from the Big spring.

And witness being further examined by the plaintiff's counsel, stated that in low stages of water the largest body of water below the Big spring, of which the Merimack river was composed, was from the Big spring; witness thought the Big spring afforded rather more than half the stream of the Merimack river below that point; but that, at wet times, and in the spring of the year, witness thought there was rather more water came down the Merimack river above the spring, than was afforded by the Big spring. The spring itself was a very large body or column of water, which burst out from a high bluff, about a half a mile from the other branch of the Merimack river. The distance from the Big spring to the mouth of the *Burbeuse*, he supposed, by land to be about fifty miles, but by water the distance was much greater, as the Merimack river was a remarkably crooked stream.

Testimony of Snelson.

Levi S. Snelson was next called as a witness for the plaintiffs, and testified, that he lived in Crawford county, Missouri, close to Massey's iron works, say about ten or twelve miles from Massey's iron works. Witness lived where he now resides for the last ten or twelve years; he

formerly [lived] at the place where John B. Brinker now lives, and of which he spoke in his testimony. Witness has worked for Massey, at his works, several times; he first began to work for him in 1831, and then quit work for him for some years, and did not do any more work for him till about twelve or eighteen months ago, when witness again *done* work for Massey. The last time he was engaged by Massey, he was employed by him in hauling stone coal for him. There had been a large quantity of timber cut on the island represented on the plat before the witness, being the same plat and survey above referred to, and given in evidence in this cause; some of this timber had been cut there about two or three years ago, at which time witness thinks there was as much as two or three hundred cords of wood cut. The Big spring spoken of was a very large one, and he would adopt the description given of it by John B. Brinker to express his ideas of it, which he thought to be very correct. In low stages of water the Big spring afforded more than half the stream of the Merimack river.

Being cross-examined by defendant's counsel, witness stated that he did state any particular time when the wood was cut, except that, about two or three years ago, there had been cut, on and about the island, two or three hundred cords of wood, as he had stated in his direct examination.

Testimony of Brown.

The plaintiff next called as a witness Joseph C. Brown, who testified that he made this survey, being the same offered in evidence above, and which witness then held in his hand. That the survey was made at the time stated on its face, and was made by the witness at the place known and called "the Big spring" of the Merimack, close to where Mr. John B. Brinker lives; that the said spring was on section one, as marked and designated on the plat before him. Mr. Samuel Massey was not there at the time witness made the survey himself, but a family resided there which witness presumed to be his family; witness was not acquainted with his family; witness was never at the place before or since. The Big spring was a very large body of water, breaking out of a high bluff, and made a stream from the spring itself of about one hundred feet wide, and a foot in depth. That witness made the survey by direction and under the authority given to him by the surveyor general of the United States at St. Louis. At the time witness was there, there was not as much water afforded by the Big spring, witness thought, as there was from the other branch of the Merimack.

Being cross-examined by the defendant's counsel, witness further stated, that the survey was made according to Mr. Cerré's directions, and in obedience to the instructions given to him by the surveyor general; Mr. Cerré made no particular reconnoisance of the ground, although personally present, but took the land as it came; and it was made by me at the particular place indicated, the Big spring, as the source of his claim. Witness stated further, that the instructions from the surveyor general were printed instructions, of which the following were a copy; no part of the instructions were written, except the written authority

given him to make the survey; and which printed instructions are as follows, to wit:

Instructions to deputy surveyors.—General instructions to deputy surveyors.

SURVEYOR'S OFFICE, ST. LOUIS.

TO DEPUTY SURVEYOR—SIR: In the execution of the surveys of private confirmed claims under the authority of this office, the following general regulations have been adopted for the government of the deputy surveyors, and they are to be strictly adhered to in all cases, unless specially instructed to the contrary. You will provide yourself with a compass of excellent quality and approved construction, having a "nonius division" and moveable sight; also, with two two-pole chains, of fifty links (of equal length) each one of said chains must be adjusted to the standard in this office, and by it you will compare and adjust that which is used at least once in every two days you are at work, and note their difference, if any, in your field book, and if there is no difference, state in your field book the fact of your having compared and found them to agree. You must likewise be provided with a full set of tally rods, of iron or steel, or pointed therewith; and allow none others to be used but the precise number you shall have selected for that purpose. Your chain-men, axe-men, and flag-men, must be men of strict moral integrity; none must be employed in whom implicit confidence cannot be reposed, and you will be ever vigilant over their conduct. Each of your field books will commence with a list of your chain-men, axe-men, and flag-men then in your service, and intended to be employed in performing the surveys you are about to execute; and at the commencement of your operations, and the subsequent engagement of a new hand, an attested record of the oath of each must be entered in the proper place of your field book, according to the form hereinafter prescribed, before he is permitted to commence work; you will also, when a chain-man, axe-man, or flag-man is dismissed, or quits work from any cause whatever, note it in your field book, together with the cause of his dismissal, or the reasons for which he quits work, and refer thereto by a note in the front part of your book.

Form of oath for Chain-men.

I, A. B., do solemnly swear, in the presence of Almighty God, that I will faithfully and impartially execute and fulfil the duties of a chain carrier; that I will level the chain and plumb the pins so as to obtain the true horizontal distance; and that I will make a true report of the length of all the lines that I may assist in measuring to the best of my abilities, so help me God.

Sworn to and subscribed before the undersigned, this day of 183 A. B.

Form of oath for Flag-men and Axe-men.

I, E. F., do solemnly swear, in the presence of Almighty God, that

I will faithfully and truly perform the duties of a flag-man (or axe-man as the case may require,) to the best of my abilities, so help me God.

Sworn to and subscribed before the undersigned, this day of 18 . E. F.

All lines must be run with the assistance of a flag or fore-vane-man, and with compass adjusted to the meridian lines of the public surveys of the United States in the immediate vicinity. If by reason of mineral attraction, or any other cause whatever, any line or lines cannot be accurately surveyed with the use of the needle, other means must be adopted so as to insure the correct execution of the work, and the manner of operating must be carefully noted in the field book. All trees which your lines, except random lines, strike, must be noted in your field book, and have two notches cut on each side thereof, in the direction of the line; but no other spot or blaze whatever is to be made thereon. All trees on each side of the lines, and next thereto, except on random lines, and those trees hereafter excepted, must be marked with two spots or blazes, diagonally, or quartering towards the line. Trees which have thereon plain marks of an old line which you are running anew, must not be reblazed, but on lines of this decription such trees will be blazed as have not good evidence of having been marked of old; and when any old corner trees, or witness trees to old corners, are cut into for the purpose of identifying the corner, all the particulars relating thereto must be entered in the field notes. All corners, where witness trees are convenient, will be perpetuated in the following manner:

1st. When a tree is at the exact place of any corner, it will be marked with three notches in the direction of each line, which runs therefrom.

2nd. Where there is no tree at the exact place of a corner, you will plant a post of the most durable wood that can be had in the vicinity; the said post must not be sharpened and driven in the earth as stakes, but must be cut off square, or nearly so, at the bottom, and be set in the ground by digging a hole to admit them two feet deep, and be very securely rammed in with earth, and also with stone when convenient; they must be at least five inches diameter, and must be nearly squared off at *top*, or faced otherwise as the case may require; and at the corners of private surveys, so that the corners of the posts will correspond to the lines which run therefrom; and at the fractional section corners, so that the corners of the posts will correspond with the cardinal points; and the letters P. S. will be marked on the several sides of the posts fronting private surveys; and the letter S. with the proper number of section on a side fronting each fractional section.

3rd. Or when there is no tree at the exact place of a corner, you may, instead of a post, insert endways into the ground, to the depth of seven or eight inches, a stone, which shall not be less than 12 inches wide, 14 inches long, and 3 inches thick, which stone will be marked with a cross, thus X. And you will particularly describe in your field notes the kind of stone used, together with its shape, dimensions, and the manner and depth it is set in the ground, and the mark put thereon.

You will ascertain and state in your field notes the course and distance from the several corner posts, trees, and stones, to a tree in each private survey and fractional section for which they stand as a corner; each of said trees you will mark with a notch and a blaze, facing the corner post, tree, or stone, the notch to be at the lowest end of the blaze; and on the blaze, which must be neatly made, you will make with a marking iron in a plain, distinct, and permanent manner, on each witness tree within a private survey, the letters PS; and each witness tree on the private land the letter S, with the number of the section, and over the letter T with the number of the township; and above this the letter R, with the number of the range in which they respectively stand. And in all cases where there is no tree in any private survey, or fractional section, within a reasonable distance of a corner on which to mark the number of township, section, or range, or letters P S, that fact must be stated in your field note. Corners in a prairie, or other situation, where bearing or witness trees are not at hand, will be perpetuated by depositing in the ground, and at least 6 inches beneath the natural surface thereof, a portion of charcoal, (the quantity to be specified in your field notes,) not less than two quarts at the place of such corners, which you will cover with three inches of dirt; and on this you will set a post, around which you will erect a mound of earth three feet high, five feet square at the base, and two feet square at the top, the sides whereof must be rivetted or faced with sods laid horizontally and in successive layers on each other, each of said layers having an offset inwards, corresponding to the general slope of the face of the mound. The posts will be of the dimensions, and marked as directed at the corners where witness trees are convenient; all of which will be noted in the description of the corner. Or in lieu of charcoal or stone (to be deposited as before stated,) you may perpetuate the corner by inserting endways into the ground, and to the depth of 7 or 8 inches, a stone, which you will mark on the top with a cross thus ⋈, and which stone shall not be less than 12 inches wide, 14 inches long, and three inches thick, over which no mound need be erected; but the kind of stone used, together with its shape and dimensions, and the manner in which it is set, and the mark put thereon, must be particularly described in your field notes; the corner posts where mounds are not made, must rise at least three feet above the surface of the ground; and where corner posts are placed in mounds, they must rise at least one foot above the top of the mound. If a corner, where witness or bearing trees are not to be found within a reasonable distance there from, shall fall within a ravine, or in any other situation where the nature of the ground or the circumstances of its locality shall be such as may prevent or prove unfavorable to the erection of a mound, you will perpetuate such corner by selecting in the immediate vicinity thereof a suitable plat of ground for a bearing or witness mound, and erect thereon a mound of earth in the same manner and *conditioned* in every respect, with charcoal deposited beneath, as before described for a corner; and determine and state in your field notes the distance and course of the bearing or witness mound, so placed and erected from the place of the corner. If the claimants or

any surveys wish their corners more permanently established than is herein required, and will furnish the additional materials and labor, you will establish the said corners in the manner they may require, and with the materials they may furnish; their consent, however, will not authorize you to establish a corner of a less permanent character than is required in the instructions. Whenever your course may be obstructed by insuperable obstacles, such as ponds, swamps, marshes, lakes, rivers, creeks, &c., you will prolong the line across such obstacles by taking the necessary right angled offsets; or, if this is inconvenient, by a *traverse* trigonometrical operation, until you regain the line on the opposite side; and in case a line is regained in advance of any obstacles, you will prolong and mark it back to the obstacle so passed, and state all the particulars thereof in your field notes; and at the intersection of lines with both margins of impassable obstacles, you will establish a witness point (for the purpose of perpetuating the intersection therewith) by setting a post, and giving in your field notes the course and distance therefrom to two trees on opposite sides of the line, each of which trees you will mark with a blaze and notch facing the post, except on margins of navigable water courses, or navigable lakes; in these cases, you will mark the tree with the proper number of the fractional section, township, and range, and with the letters P. S. as the case may require.

The courses of all navigable rivers, which may bound or pass through a private or confirmed claim, must be actually taken in the survey of the claim, and their width must be determined at those points where they may be intersected with the lines of the survey. Those navigable rivers which pass through a private survey must be meandered on each side, but those which are boundaries thereof need only be meandered on the side adjoining the survey; and when a private survey, corners on, or crosses a navigable water course, the said water course must be meandered from the corner or point of intersection to the nearest corner of the public survey, outside the private survey. Any excess or deficiency in the length of any boundary line, or excess of error, in the falling off from the corner to which any closing line shall be run, or that may exceed three chains in the length of the line or falling from the corner in closing a league square, and in the same proportion for tracts of intermediate sizes, or of greater or less dimensions than of those above specified, with an allowance in all cases of five additional links for every line exceeding four in a survey, must be corrected and reduced within those limits before leaving the ground, by resurveying the line or lines which may have occasioned the excess or deficiency in the length of such closing line, or excess of error in the falling of the closing line from the the corner run for. All notes of corrections and re-surveys must be entered as such in the proper place of the field book, according to the order in which they may be executed, and the former and erroneous surveys must be referred to in said entries; also, in the margin of the pages containing the notes of erroneous surveys that fact must be stated, and the pages on which the notes of the re-surveys or corrections are entered,

must also be referred to. At the intersections of the several lines of the public surveys, corners must be established for the proper fractional sections (in the manner heretofore directed for establishing corners,) and the course and distance therefrom to the vacant corner on the line of the public survey, and outside of the private survey, must be determined and entered on the field book. Also, when one private survey corners on a line of another private survey, or intersects it, and continues across into the survey of which the line so intersected is a boundary line, and the adjoining land is public, the course and distance therefrom to the nearest corner on the line of the private survey upon which you are cornering, and outside the survey you are executing, must be determined and entered in the field book. When a line of one private survey continues across, or into another confirmed private survey, or block of surveys, the point of intersection with the several lines thereof, when there is not public land adjoining, will be perpetuated in the manner of establishing corners, except that each witness tree will be marked with only a blaze and notch facing the post or stone set to perpetuate the aforesaid point of intersection; and the relative position of the points of intersection thus perpetuated, and of the corners on the lines intersected, must be determined and entered in the field book. And when public land adjoins the point of intersection, the said point will be perpetuated, as a fractional section corner, by marking a tree on the public land, as before directed for marking witness trees to fractional section corners, and by marking one other witness tree on the private land with a blaze and notch facing the corner tree, post, or stone. Whenever the terms "public surveys" and "public land," or terms of similar import, are used in these instructions, you are to understand that they comprehend all land surveyed as public land which has not been included in the survey of private claims subsequently executed, and all lines run as public lines, notwithstanding the United States may have parted with the land by public or private sale. All rivers, creeks, springs, and smaller streams of water, with their width and the course they run in crossing the lines of surveys, and whether navigable, rapid, or otherwise; also swamps, ponds, stone quarries, coal beds, peat or turf grounds, mounds, precipices, caves, rapids, cascades, or falls of water, minerals, ores, salt springs, salt licks, and fossils; prairies, hills, and mountains; towns, villages and settlements; forges, factories, and cotton gins; roads, pathways, and all uncommon, natural, or artificial productions which may come to your knowledge, are to be particularly regarded and noted in your field book. You will likewise note where the lines enter, and where they leave, the creek or river bottoms. At the end of every line you will give a particular description of the face of the country over which it passes, whether level, hilly, or mountainous; of the quality or rate of the soil, and whether it is fit, or unfit, for cultivation; particularly whether the bottom land is liable to inundation or not; and if it shall be liable to inundation, state also to what depth, so far as that circumstance may come to your knowledge, whether from observation of the water marks upon the trees, or any other source of information; and

note the kinds and quality of timber and undergrowth, naming the different sorts in the order in which they predominate. The description of each line must be full, and not refer to any previous description. The names of all witness or bearing trees, and station or line trees, must be written out in full, and not abbreviated; nor must any word, which relates to the course or length of a line, or any object noted thereon, or in the establishment of a corner, be abbreviated, except in stating the course to the witness trees from the corners, the course of meanders, and the bearing or direction of small streams, mountains, &c., when they are not to the cardinal points; in these cases the capital letters N, S, E, and W, plainly and distinctly made, will be used. The plats, which are to be returned with a description of each survey, will exhibit, as accurately as practicable, from careful occular observation (in addition to the measurement on the line) to be made by you and entered in your field book, the true situation of all objects noted, including the courses and connections of all rivers, and other water courses, and travelled roads or tracks, denoting the principal places to which they lead, and the enchainment and direction of remarkable hills or mountains. Your field books for your original notes will be of such a size as you deem most convenient; they will be of the best quality of foolscap paper, and the original field notes, which are to be returned to this office, together with a fair and correct copy thereof, must be kept in a plain and intelligible manner, according to the form hereafter prescribed in these instructions. Every entry must be so specified as not to admit of a doubt as to what is intended thereby, or a possibility of a misconstruction of your meaning. The said notes must be entered in the same order, from day to day, as the work is executed on the ground, including all surveys and corrections, and the date must follow each day's work. Although your lines are to be measured with a chain of two two-poles, you are to keep your reckonings in chains of four poles of one hundred links each; and all entries in your field book, and all plans and calculations, are to be made according to the decimal measure of a chain. The courses and distances on your lines must be placed in the margin of your field book on the left hand, (for which purpose it should be large,) and your remarks on the right. The field book in which you copy your notes will be according to a form to be prescribed by this office. In all measurements, the level or horizontal length is to be taken, and not that which arises from measuring over the surface of the ground when it happens to be uneven or hilly. Your field books containing your original notes will be signed by each of your chain-men, axe-men, and flag-men, and they and the copies thereof will be certified by yourself, according to a form to be prescribed by this office, in conformity with the requirements of your instructions. The survey of claims which are confirmed unconditionally, according to a former survey, will conform thereto regardless of any excess or deficiency in quantity, provided the old lines and corners can be found and properly identified; in which event, the old corners will be run to, and the true courses and lengths of the several lines, according to your operations, will be cor-

rectly stated in the field notes; and if the old lines and corners cannot all be found, you will conform to the old survey as near as practicable, by running the courses and distances called for, or to the intersection of the proper lines as may be required, making the necessary allowance for the difference in the variation of the needle. The re-surveys of claims, which are confirmed according to an old survey, but are restrictive in quantity, will be surveyed as above directed for those not restricted, except that if there is any excess or deficiency, it will be thrown off or taken in by a line parallel to that old line of the survey, which the claimant may direct; or if he fails or declines to give directions, throw off the excess, or take in the deficient quantity, on the side which you think will best promote his interest, being careful to note all the particulars relating thereto in your field book, and give the position of the old lines and corners which may be abandoned because of the excess or deficiency in quantity. Claims which are confirmed according to the concession, and have been legally surveyed in conformity therewith, except as to exactness in quantity, will be resurveyed as the class of cases last above mentioned. If the survey heretofore executed of a claim which is confirmed according to a concession, whether the concession is, or is not, special as to the locality, but is special as to the direction of the lines, the proportional length of the different sides, or the figure of the survey to be made in virtue thereof, does not conform to these requirements of the concession, the said survey will be altogether disregarded, except so far as it may be useful, in cases where the concession is not special as to locality in identifying the situation of the intended [concession] to be confirmed, unless the survey was executed and approved by the proper Spanish officer prior to the transfer of the country to the United States; in which event, the survey will be considered as evidence of the changed intention of the authority making the concession, and will be taken as a part and parcel thereof. Claims which are confirmed according to special concessions, and which have not been surveyed, you will survey in strict accordance with the terms of the concessions; always bearing in mind, that where there are no special requirements in the concession, it was the general practice under the government with which the claims originated to run them either in squares, or in right-angled parallelograms of 1, 5, 10, or some intermediate or greater number of arpens, by 40 or 80, according to the size of the tract, or double as long as wide, unless some other survey or grant intervened and rendered a departure from this rule unavoidable; in which case the rule was only so far departed from as was necessary to get rid of the interference with the prior surveys. Setlement claims which are legally surveyed before the confirmation, and sanctioned by the surveyor general, will be re-surveyed as nearly conformable to the old survey as practicable, departing therefrom only so far as may be necessary to include the exact quantity confirmed; unless the old survey of a newly confirmed tract interferes with a legally executed and approved survey of an old confirmation; in which event the survey under the new confirmation must be made so as to avoid all such interference,

by taking in such of the adjoining public lands as will make the survey in as compact and regular form as practicable. Settlement claims which are not surveyed and sanctioned by the surveyor general before the confirmation, will be surveyed as near in squares as may be, so as to include the improvements and not interfere with prior claims. You will allow the claimant or his authorized agent, in these cases, to designate the land to be taken in by conforming as near as practicable to the section lines, and the divisional lines of sections; that is, you will not make a division of more than one quarter section by a line not recognised by law as creating a legal subdivision. If however the improvements, in virtue of which a settlement claim is confirmed, is within a survey of an old confirmed claim, the survey of said settlement right must interfere with said old survey so much as may be necessary to include the improvement upon which it is founded. Information given to you by a claimant or his agent relating to the situation of a claim, will govern your operations, provided you believe, from all the circumstances which come to your knowledge, that such information is correct; and provided, also, that it does not contradict the papers with which you may be furnished. The position of any point or place called for in a concession, and also of the settlement or improvement in virtue of which a settlement claim is confirmed, must be determined and stated in your field note. Whenever the line of a survey is intended to conform to the legal subdivision line of a section, either in part, or to its whole extent, said subdivision line must be run in conformity with the principles established by law for surveying and laying off the public lands of the United States. And when the lines of a survey run with the legal subdivision line of a section, with a section line, or with the line of another private survey, you will call in your field notes for running with said line, and call for all old corners which you may pass, and state distinctly their position, condition, and general appearance, and whether the evidence thereof found upon the ground agrees with the description of it furnished you from this office. And if the evidence so found should not agree with the description, state at large in your field notes how you determined its position, and what induced you to believe it to be the place of a corner, the description of which, as furnished you, did not agree with the evidence found upon the ground, in order that this office may be enabled to decide upon the sufficiency of your reasons for adopting it as the true position of the corner. If the description of corners furnished by this office shall be insufficient for properly connecting a claim with the adjoining surveys, or shall be in any way whatever defective, you will give immediate notice thereof, and cease operation on lines that may be affected thereby, until you are furnished with the proper description; and you are to distinctly understand, that no omission or oversight of this office, in furnishing in the first instance papers of this kind, will be considered a sufficient excuse for defective and improper connexions with the adjoining and interfering surveys, public or private; this may frequently happen, because the very indefinite calls of many confirmations renders it extremely uncertain what ground the survey will cover,

and consequently what corners may be wanted to connect with; you must therefore, in all such cases, after ascertaining what additional descriptions will probably be wanted therefor, wait until they shall be furnished. Old corners of the public or private lands in the United States surveys, on which you close or measure to, or that become corners of a survey you are executing, and which may have [been] destroyed, may be renewed by you without further instructions from this office, provided the necessary contiguous corners can be found and properly identified. The position of said destroyed corners will be determined in the following manner:

1st. When at the intersection of two lines, by ascertaining the precise intersection of said lines.

2d. When at the average distance between two other corners, by determining said average distance.

3d. When a legal subdivisional distance from a section corner, and given fractional distance from some other corner, re-establish it at the like proportional distance from each of said corners, according to your operations.

4th. When between two fractional corners, and at a given fractional distance from each, re-establish the corner at the place from which your measure to one of said fractional corners will have the same ratio to your measure to the other fractional corner, that the former measures had one to the other. If in tracing an old line the corners of each extremity thereof can be found, and the line is blazed evenly between the said corners, the old blazes will be followed throughout; if, however, the blazed way from one corner to another varies from a straight line, it will not be followed in its windings, but new marks will be made on a direct line from corner to corner, unless some other survey or surveys on the opposite side of the line to your operations, corners on the said blazed way out of a direct line between the corners of the survey you are executing; in which event you will run straight between the corners you may find on the blazed way, and report the true length and course of each division into which the boundary may be cut by reason of said intervening corners. When a corner cannot be found and properly identified, and the contiguous corners cannot be found to establish it in one of the four ways above authorized, the surveyor may, at his own risk of having the work approved, adopt such measures as may seem to him best, from all circumstances within his knowledge, to re-establish the corner, and report every thing relating thereto to this office, to enable a proper decision to be made upon his plan of operations, or he may report all the facts connected with the case, and await further instructions. You must always recollect that the relations of a deputy surveyor to this office are of a highly confidential character; that to his discretion, as well as to his fidelity and skill, much is necessarily entrusted; for it is evident that no instructions, however elaborate and detailed, can possibly anticipate and provide for every emergency which may occur upon the ground; and that the deputy surveyor, when there, is the only representative of public interest; he should therefore act to the

best of his understanding, and constantly bear in mind, that the instructions issued by this office are designed, and have no other aim than to fully accomplish the objects of the law, the most important of which are to perform the work accurately on the ground, to establish the lines and corners in the most permanent and durable manner, and to describe the whole operations in the field book plainly, fully, and distinctly, in such a way that the meaning cannot possibly be mistaken or misunderstood.

The following is a comparative statement, heretofore adopted by this office, of the land measures of the United States, and the French measures formerly used in the late Province of Louisiana, and will be considered in all surveys as the true proportion between said measures:

Linear measure.

French feet.	U. States feet.
72 are equal to	77
Perches.	Poles.
6 "	7
Chains.	Links.
1	0 29.166
2	0 58.333
3	0 87.5
4	1 16.666
5	1 45.333
6	1 75.
7	2 04.166
8	2 33.333
9	2 62.5
10 or 1 arpent.	
Lineal	2 91.666
2	5 83.333
3	8 75.
4	11 66.666
5	14 58.333
6	17 50.
7	20 41.666
8	23 33.333
9	26 25.
10	29 16.666
100	291 66.666
1000	2916 66.666
12	35
Side of a league square.	
84	245
Side of a mile square.	
Arpents. Perches.	
27	4.27 80.

Superficial measure.

Arpents.	Acres.
288 are equal to	245
1	0 85.07
2	1 70.14
3	2 55.21
4	3 40.28
5	4 25.35
6	5 10.42
7	5 95.49
8	6 80.56
9	7 65.625
10	8 50.69
100	85 [illegible].94
1000	850 69.44
10000	8506 94.44
Arpents. Perches.	Acres.
1 17.551	1
2 35.102	2
3 52.653	3
4 70.204	4
5 87.755	6
7 05.306	6
8 22.857	7
9 40.804	8
10 57.959	9
11 75.510	10
117 55.102	100
1175 51.020	1000
11755 10.204	10000
A league square contains—	
Arpents.	Acres.
7056	6002.50
A mile square contains—	
Arpents. Perches.	
725 32.64	640

Form of keeping field notes.

If first book, or if there are any new hands employed, their oaths will come foremost. A B, hind-chainman; C D, fore-chainman; E F, flag-

man; G H, axeman. Measuring chain compared with the standard and found correct.

Compass adjusted to the line, between sections 25 and 26, township 89 north, range 72 west, of the 5th principal meridian, variation 8° and 30′ east.

Survey a tract of 800 arpents, equal to 680 $\frac{56}{100}$ acres of land, granted to J K, on the 20th day of March, 1803, by Carlos Dehault Delassus, lieutenant governor of Upper Louisiana; surveyed by Antoine Soulard, surveyor general for the same province, on the 3d of July, 1801; recommended for confirmation, according to the concession, by the late board of commissioners, on the 17th of August, 1834. Decision No. ——, and confirmed according to the said decision of the commissioners, by an act of Congress, approved 4th of July, 1836. Begin at the old southwestern corner, a black oak, 36 inches diameter, with old marks thereon, and which I mark with three notches, in the direction of each line of this survey which runs therefrom; from said black oak a hickory, 16 inches diameter, marked P. S., bears N. 20° E. 45 links, and a white oak, marked R. 72 W., T. 89 N., sec. 26, bears S. 33 W. 14 links.

Thence S. 82° E.	With the old marked line.
Chains 14.52	A walnut, 17 inches diameter.
19.36	A road leading to J K's mill, bears NW.
46.30	Enter a field, bears NW. and SE.
72.30	Intersect the lines between sections 25 and 26, township 89 north, range 72 west, where set a post in the field, for corner to fractional sections 25 and 26, from which a poplar, 18 inches diameter, bears S. 66° E. 13 links; and a hickory, 24 inches diameter, bears S. 45° W. 43 links; measured south 3 chains and 24 links to the $\frac{1}{4}$ section corner on said line.
75.00	Leave the field, bears NE. and SW.
79.00	A creek, 50 links wide, runs north.
90.00	Leave timber and enter prairie, bears NW. and SE.
116.67	Deposite two quarts of charcoal 6 inches beneath the natural surface of the earth, covered the charcoal with three inches of dirt, and set thereon a post, 8 inches diameter, and 4½ feet long, around which I erect a mound of earth, 3 feet high, 5 feet square at the base, and 2 feet square at the top, the sides whereof are riveted or faced with sods laid horizontally and in successive layers on each other, each layer having an offset inward, corresponding to the general slope of the face of the mound, for corner of the survey and fractional section 55. Land rolling, good

	soil; timber hickory and white oak; no undergrowth.
Thence N. 8° E. Chains 43.40	Intersect the line between sections 24 and 25, township 89 north, range 72 west, where, for corner to fractional sections 24 and 25, set a limestone, 22 inches long, 14 inches wide, and 4 inches thick, endways in the ground, to the depth of 8 inches; marked said stone distinctly with a cross, thus ⋈, on the east side, the wide way facing east; measured east on the line, between sections 24 and 25, 30 chains and 32 links, to the corner of sections 24 and 25, on the range line.
58.33	Set a post in the prairie, for corner to this survey, and fractional section 24, from which a lone white oak, 16 inches diameter, bears N. 17° E.
Thence N. 8° W.	35 links, no other tree convenient; 17th of September, 1836.
Chains 16.00	Enter timber, bears NE. and SW.
17.48	A white oak, 28 inches diameter, corner to X T's survey, No. 29,582, for 160 acres.
38.00	Another corner of said survey, No. 29,582, one of the old witness trees, a black oak, 17 inches diameter, bears N. 20° E. 17 links distant; the other witness tree has fallen down. I therefore mark, in fractional section 24, a walnut, 18 inches diameter, which bears N. 47° W. 82 links distant.
52.80	Intersect the line between sections 23 and 24, 17 chains and 93 links, south of the quarter-section corner; set a post for corner to fractional sections 23 and 24, from which a white oak, 16 inches diameter, bears N. 25° E. 18 links, and a white oak, 18 inches diameter, bears N. 32° W. 18 links.
60.15	A hickory, 18 inches diameter.
72.13	Enter bottom land of river Ohaha, bears NE. and SW.
95.14	Intersected the right and east bank of Ohaha river, runs northeasterly; set a post for corner to fractional section 23, from which a hickory, 15 inches diameter, bears N. 26° E. 14 links, and a birch, 24 inches diameter, bears S. 72° E. 72 links.
101.00	The left and west bank of Ohaha river set a post, corner to fractional section 23, from which an

	elm, 18 inches diameter, bears S. 62° W. 13 links distant; here enter hills.
*116.66	*Set a limestone, 16 inches long, 14 inches wide, and 4 inches thick, endways into the ground, to the depth of 8 inches; marked said stone distinctly with a cross, thus ⋈, on the SE. side, the wide way facing S. 82° E.; and from said stone a hickory, 18 inches diameter, bears N. 27 W. 32 links, and a black walnut, 20 inches diameter, bears S. 24° E. 13 links.
Thence S. 8° W.	On a random closing line.
Chains 14.28	The left and northerly bank of Ohaha river runs easterly.
21.00	The right bank of the river.
58.25	Intersect the southern boundary of the survey, 27 links S. 82° E. of the beginning corner tree, from which beginning corner tree I correct the line.
N. 8¼ E., Chains	
14.32	Enter river bottom, bears E. and W.
23.00	Intersect the line between sections 23 and 26, 11 chains and 17 links east of the corner to sections 22, 23, 26 and 27, set a post, &c.; (here describe the corner.)
37.25	The right bank of Ohaha river, set a post, &c.; (here describe the corner.)
43.47	The left bank of the river, where set a post, &c.; (here describe the corner,) enter hills here.
58.25	The northwestern corner of the survey.

Then, to meander the Ohaha river through J K's survey, and through the adjoining fractional section, I begin at the corner to fractional sectional sections 22 and 23, township 89 north, range 72 west, on the right bank of the Ohaha river, and meander down the right bank of said river, through said fractional section 23, as follows: N. 82° E. 7.20 chains, at 2 chains the mouth of a branch, 8 links wide, comes from the SE.; N. 74½° E. 6.80 chains, to the corner at the intersection of the western boundary of J K's survey, with the right bank of the Ohaha river. Thence, with the meander of the said right bank of the Ohaha river, through J K's survey, as follows: N. 70° E. 10.00 chains, at 4 chains a ferry landing; N. 63° E. 12.45 chains, at 7.50 chains the mouth of J K's mill creek, 150 links wide, comes from the SE. The mill is on the left side of the creek, and about 25 chains, in southeasterly direction; N. 22° E. 9.70 chains to the corner, at the intersection of the northern boundary of J K's survey, with the right bank of the Ohaha river. Thence down the right bank of the Ohaha

river, through fractional section 23, township 89 north, range 72 west, as follows: N. 25° E. 25.50 chains; N. 50° E. 2.00; N. 14° E. 30.00, to the corner of fractional sections 14 and 23.

[Then meander the left bank of the river; and your field work for this survey and its connections with the public surveys will be completed.]

Separate instructions will be furnished for making the plat and description of the survey.

Testimony of Evans.

The plaintiffs next called as a witness one Augustus H. Evans, who was sworn, and testified that this claim was located at "*the Big Spring*," on the Merimack. That in the year 1818 or 1819, witness had been at place and camped there, with some other persons.

Testimony of Massey.

The plaintiff next called as a witness one Henry A. Massey, who was sworn, and testified that he had been at Massey's iron works at the Big Spring, first in 1827 or 1828. That between the years 1826 and 1828, Samuel Massey, in speaking of his works, at the Big Spring on the Merimack, said that there was an old claim on the land which he understood had not been allowed or confirmed by the board of commissioners, and he authorized Major Biddle at that time to try and buy up this old claim, if he could get it for twenty cents an acre; that rather than be troubled with the claim he was willing to give a small sum for it, and had authorized Major Biddle to compromise the matter by buying it accordingly.

Admission of possession by defendant.

The defendant admitted that he was, before and at the time of the commencement of this suit, in the possession of the whole of section one, township thirty-seven north, range six west, except the west half of the southwest quarter of said section, containing eighty acres, as laid down on said plat and survey; being that on which the *Big Spring* and improvements about the iron works were.

The plaintiffs next offered in evidence the following plat and certificates, certified by F. R. Conway, surveyor of the public lands in the States of Illinois and Missouri.

St. Louis, 11*th April*, 1846.

Plat No 2, from register's office.

Township 37 north, range 6 west, and townships Nos. 38 north, ranges 5 and 6 west, of the 5th principal meridian.

[*For plat, see original, page* 29.]

REGISTER'S OFFICE, ST. LOUIS, MO.,
January 2, 1841.

The tracts hereafter described, included in survey No. 3120, have been sold at this office, at public sale, on the 5th of November, 1838. The plat showing the location of Pascal L. Cerré's claim, having been received at this office on the day following the public sale, through the post office.

Certificate No. 10778 { Samuel Massey and / Thomas James } S. E. fr'l qr. (E. and W. of river) 29, $145\frac{43}{100}$ a's.

Certificate No. 10776, same, W. fr'l $\frac{1}{2}$ S. W. qr. N. W. fr'l qr. (S. of river) and fr'l on island in Mk. riv. 31, $187\frac{14}{100}$.

Certificate No. 10777, same, N. E. fr'l qr. (N. and S. W. of river,) section 31, $61\frac{51}{100}$ acres.

Certificate No. 10772, same, E. fr'l $\frac{1}{2}$ of N.W. qr. (S. of riv.) W. fr'l $\frac{1}{2}$ of N. W. qr. (N. of riv.,) and E. fr'l $\frac{1}{2}$ (in bend of river,) section 32, $172\frac{51}{100}$ acres.

JULIUS DE MUN, *Register*.

SURVEYOR'S OFFICE, SAINT LOUIS, 11*th April*, 1846.

The above diagram is a correct copy of the original diagram on file in this office, (of the survey of the claim of 3528 arpents, in township 37 north, range 6, and township 38 north, range 5 and 6 west, of the 5th principal meridian, confirmed to Pascal L. Cerré by the act of Congress of the 4th of July, 1836, according to decision No. 2 of the late board of commissioners)—which was transmitted on the 30th of December, 1840, to the register of the land office at St. Louis, to have noted on the part thereof that lies in township 38, ranges 5 and 6, the tracts sold by the United States prior to the passage of the act referred to; and was returned to this office on the 2d of January, 1841, with the annotations thereon in *red ink*, by said register, and his statement at the foot thereof, of which the above is a correct copy.

F. R. CONWAY,
Surveyor of the public lands in the States of Illinois and Missouri.

Which was objected to by the defendant's counsel as not being evidence, which objection was sustained by the court, and the same was accordingly excluded from being given or received in evidence by the court. To which opinion and judgment of the court, in refusing said plat and certificates, so offered to be read in evidence, from being received, the plaintiffs, by their counsel, instantly excepted in writing.

The plaintiffs, by their counsel, next read in evidence the following deed of conveyance from Pascal L. Cerré, the grantee, and Michael S. Cerré, Pierre D. Papin, and Luke E. Lawless, to Amedee Menard, and which is as follows:

P. L. Cerré and others, deed to Amedee Menard.

This deed, made this twenty-first day of February, in the year of our Lord eighteen hundred and forty-four, between Pascal L. Cerré, Michael S. Cerré, Pierre D. Papin, and Luke E. Lawless, all of the city and county of St. Louis, in the State of Missouri, of the one part; and Amedee Menard, of the county of Randolph, in the State of Illinois, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five thousand dollars, to them cash in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents, do grant, bargain, sell, and convey, unto the said party of the second part, a certain tract, piece, or parcel of land, situate, lying, and being in the county of Crawford, and State of Missouri, containing three thousand five hundred and twenty-eight arpens of land, and which was confirmed by the late board of commissioners, for adjusting and confirming French and Spanish claims to lands, to Pascal L. Cerré, by decision number two of said board, and which has been legally surveyed under the authority of the United States, and a survey thereof returned to the office of the surveyor general of the United States at St. Louis, as containing three thousand and one acres and twenty-five hundredths of an acre; being survey numbered three thousand one hundred and twenty, situate in township thirty-eight north, of range five west, and townships thirty-seven and thirty-eight north, ranges five and six west, of the fifth principal meridian; together with all and singular the rights, privileges, and appurtenances thereto belonging, or in anywise appertaining. To have and to hold the said tract or piece of land above described, unto him, said party of the second part, and to his heirs and assigns, and to his and their only proper benefit and behoof forever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CERRE, [SEAL.]
MICHAEL S. CERRE, [SEAL.]
P. D. PAPIN, [SEAL.]
L. E. LAWLESS. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF MISSOURI, *county of St. Louis, ss:*

Be it remembered, that on this twenty-second day of February, eighteen hundred and forty-four, before the undersigned, clerk of the county court within and for the county aforesaid, came Pascal L. Cerré, Michael S. Cerré, Pierre D. Papin, and Luke E. Lawless, who are all personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledge the same to be their act and deed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of said court, at office, in the city of St. Louis, the day and year aforesaid. JAMES H. MILBOURN, *Clerk*.

Which said deed is endorsed on the back of the same thus: "Filed for record, and recorded 24th Feb'y, 1844. C. T. Wood, clerk."

STATE OF MISSOURI, *county of Crawford, ss:*

I, C. T. Wood, clerk of the circuit court, and ex-officio recorder within and for the county aforesaid, do hereby certify, that the foregoing deed was filed for record, and recorded on the *24th day of February, A. D.* 1844, in deed book B, pages 290 and 291.

In testimony whereof, I have hereunto set my hand, with the seal of said court affixed, at office, in the town of Steelville, this 24th day of February, A. D. 1844.

[L. S.]

C. T. WOOD, *Clerk.*

The plaintiffs next gave in evidence the following statement of Judge Pope, which was admitted as evidence in the cause by the defendant:

Statement of Judge Pope—admitted.

Col. P. Menard, last of Kaskaskia, was married twice. In his first marriage he had four children, all of whom are now living—Audille Maxwell, widow of H. H. Maxwell, dec'd, Peter Menard—these children reside in Illinois—Berenice Chouteau, widow of Chouteau, dec'd, *Alsire*, the wife of George H. Kennerly.

In his second marriage he had five children, who survived him, viz: Edmund, Lancier, Cyprien, Amedee, and Sophia, wife of John Radford. These children reside in Illinois, except Amedee, (the plaintiff originally in this suit,) who died, without issue, since the death of his father.

NATHAN'L POPE.

The plaintiff next gave and read in evidence the following letter of the Secretary of the Treasury of the United States, produced by Thomas Watson, register of the land office at St. Louis, from the files of his office, dated 10th June, 1818, which is as follows:

Letter of the Secretary of the Treasury to Comm'r of Gen. L. O.

TREASURY DEPARTMENT, *10th June*, 1818.

SIR: You are requested to instruct the recorder of land titles in the Missouri territory to furnish to the receiver and register of the land district of St. Louis a descriptive list of the land claims which have been presented and registered under the different acts of Congress for confirming the rights of individuals to land which have not been confirmed, and that are situate within the said land district, with as little delay as practicable; also a list of the same kind to the receiver and register of the district of Howard county, of the land claims within said district which in like manner have not been confirmed. For this service he will be entitled to a reasonable compensation. You are also requested to direct the register and receiver of those districts, respectively, to withhold from sale all such lands until otherwise directed. It may be proper, however, to advise those officers that this act is not to be considered as in any

manner countenancing the idea that such claims are considered equitable, or that their being withheld from sale at this time ought to excite an expectation that they will ultimately receive the sanction of Congress. They are withheld from sale because the land claims have been, during the latter end of the late session of Congress, referred to the Secretary of the Treasury, with directions to report to the next session. The receiver and register should be instructed to make the subject of these observations known, for the purpose of preventing speculation in those land claims.

I have the honor to be, your most ob't serv't,

(Signed) WM. H. CRAWFORD.

JOSIAH MEIGS, esq., *C. G. L. O.*

REGISTER'S OFFICE, ST. LOUIS, MO.,
9th April, 1846.

The within copy of letter of the Treasury Department, dated 10th June, 1818, addressed to Josiah Meigs, esq., C. G. L. O., is correctly copied, in every word and figure, from the said document on file in this office.

THOMAS WATSON, *Register*.

The plaintiffs also gave in evidence a list purporting to have been made out by Frederick Bates, formerly recorder of land titles, and to be a list of land claims not finally acted on by Congress, which list was produced by said Watson, register as aforesaid, from the files in his office, of which list the following is an extract, to wit:

List by recorder of land titles.

Claimants.	Reference.	Quantity.	Situation.	Remarks.
Pasquez Leon Cerré.	Reps. 332.	7,056 arpens.	Maramee and Gasconade.	

LAND OFFICE, ST. LOUIS, MO.,
Register's office, April 9th, 1846.

The foregoing is a true copy of an entry on the 13th page of a document on file in this office, entitled "Claims to lands in the old counties of St. Charles and St. Louis, including Howard, as to which Congress has made no decision," to which document is appended a certificate as follows, to wit:

"OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, *10th July*, 1818.

The foregoing is a list of claims regularly entered in this office, and supposed to be situated, or intended to be located, within the old counties of St. Charles and St. Louis, (of which the county of Howard now forms a part,) as to which claims it is not known to me that Congress

has made any decision. The claims of this class within the exterior lines of the villages, (with the exception of the commons,) are not for the present communicated, as they seem to me to have been appropriated generally, by the act of 13th June, 1812."

(Signed,) "FREDERICK BATES."

Given under my hand the day and year above mentioned.

THO. WATSON, *Register*.

The plaintiffs likewise read in evidence the proclamation of the President of the United States, dated June, 1823, and published in the summer or fall of 1823, for the sale of public lands, on the third Monday of November, in that year, at St. Louis, which were situate in the township and range in which the land sued for in this action is situate.

It was admitted by the defendant that the property in dispute was worth more than two thousand dollars. The plaintiffs here closed their case.

Defendant's evidence.—Patents.

The defendants then offered the following evidence, being patents issued by the President of the United States.

Certificate No. 679.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Samuel Massey and Thomas James, of Ohio, have deposited in the General Land Office of the United States a certificate of the register of the land office at Jackson, Missouri, whereby it appears that full payment has been made by the said Samuel Massey and Thomas James, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands," for the lot No. one, northeast quarter of section one, in township thirty-seven north, of range six west, in the district of Cape Girardeau, and State of Missouri, containing eighty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Samuel Massey and Thomas James.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Samuel Massey and Thomas James, and to their heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Samuel Massey and Thomas James, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twentieth day of December, in the year of our Lord one thousand eight hun-
[L. S.] dred and twenty-six, and of the independence of the United States the fifty-first.

By the President, J. Q. ADAMS.

GEORGE GRAHAM,
Commissioner of the General Land Office.

Recorded Vol. 2, page 89.

Certificate No. 680.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Samuel Massey and Thomas James, of Ohio, have deposited in the General Land Office of the United States a certificate of the register of the land office at Jackson, Missouri, whereby it appears that full payment has been made by the said Samuel Massey and Thomas James, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the lot No. two, northeast quarter of section one, in township thirty-seven north, of range six west, in the district of Cape Girardeau, and State of Missouri, containing eighty-one acres and twelve-hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Samuel Massey and Thomas James.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Samuel Massey and Thomas James, and to their heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Samuel Massey and Thomas James, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be
[SEAL.] made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first.

J. Q. ADAMS.

By the President:

GEO. GRAHAM,
Commissioner of the General Land Office.

Recorded Vol. 2, page 90.

Certificate No. 681.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Samuel Massey and Thomas James, of Ohio, have deposited in the General Land Office of the United States a certificate of the register of the land office at Jackson, Missouri, whereby it appears that full payment has been made by the said Samuel Massey and Thomas James, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the lot No. one, northwest quarter of section one, in township thirty-seven north, of range six west, in the district of Cape Girardeau, and State of Missouri, containing eighty acres, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by Samuel Massey and Thomas James.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Samuel Massey and Thomas James, and to their heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Samuel Massey and Thomas James, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be [SEAL.] made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first.

J. Q. ADAMS.

By the President:

GEO. GRAHAM,
Commissioner of the General Land Office.

Recorded Vol. 2, page 91.

Certificate No. 682.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Samuel Massey and Thomas James, of Ohio, have deposited in the General Land Office of the United States a certificate of the register of the land office at Jackson, Missouri, whereby it appears that full payment has been made by the said Samuel Massey and Thomas James, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the lot number two, northwest quar-

ter of section one, in township thirty-seven north, of range six west, in the district of Cape Girardeau, and State of Missouri, containing eighty-two acres and ninety-six hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Samuel Massey and Thomas James.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Samuel Massey and Thomas James, and to their heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Samuel Massey and Thomas James, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be [SEAL.] made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first.

J. Q. ADAMS.

By the President:

GEO. GRAHAM,
Commissioner of the General Land Office.

Recorded Vol. 2, page 92.

Certificate No. 683.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Samuel Massey and Thomas James, of Ohio, have deposited in the General Land Office of the United States a certificate of the register of the land office at Jackson, Missouri, whereby it appears that full payment has been made by the said Samuel Massey and Thomas James, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the west half of the southeast quarter of section one, in township thirty-seven north, of range six west, in the district of Cape Girardeau, and State of Missouri, containing eighty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Samuel Massey and Thomas James.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Samuel Massey and Thomas

James, and to their heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Samuel Massey and Thomas James, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[L. S.]

Given under my hand, at the city of Washington, the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first.

J. Q. ADAMS.

By the President: GEO. GRAHAM,
Commissioner of the General Land Office.

Recorded vol. 2, page 93.

Certificate No. 684.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Samuel Massey and Thomas James, of Ohio, have deposited, in the General Land Office of the United States, a certificate of the register of the land office at Jackson, Missouri, whereby it appears that full payment has been made by the said Samuel Massey and Thomas James, according to the provisions of the act of Congress of the 24th April, 1820, entitled "An act making further provision for the sale of the public lands," for the lot or east half of southwest quarter of section one, in the township thirty-seven north, of range six west, in the district of Cape Girardeau, and State of Missouri, containing eighty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Samuel Massey and Thomas James. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Samuel Massey and Thomas James, and to their heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Samuel Massey and Thomas James, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[L. S.]

Given under my hand, at the city of Washington, the twentieth day

of December, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first.

J. Q. ADAMS.

By the President: GEO. GRAHAM,
Commissioner of the General Land Office.

Recorded vol. 2, page 94.

Certificate No. 725.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Samuel Massey and Thomas James, of Gasconade county, have deposited, in the General Land Office of the United States, a certificate of the register of the land office at Jackson, Missouri, whereby it appears that full payment has been made by the said Samuel Massey and Thomas James, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the east half of the northeast quarter of section one, of township thirty-seven north, in range six west, in the district of land offered for sale at Jackson, Missouri, containing eighty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Samuel Massey and Thomas James. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Samuel Massey and Thomas James, and to their heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Samuel Massey and Thomas James, and to their heirs and assigns forever, as tenants in common and not as joint tenants.

In testimony whereof, I, John Quincy Adams, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. [L. S.]

Given under my hand, at the city of Washington, the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and of the independence of the United States the fifty-second.

J. Q. ADAMS.

By the President: GEO. GRAHAM,
Commissioner of the General Land Office.

Recorded vol. 2, page 139.

Instructions.

The defendant, by his counsel, then moved the court to give to the jury the following instructions:

1. That the plaintiffs in this case cannot recover against the defendant for any land embraced within the patents given in evidence by the defendant.

2. That the plaintiffs cannot recover in this case against the defendant, on account of any land within the plaintiffs' survey, without proof that the defendant, at the commencement of this suit, was in possession thereof; and the fact that the defendant had cut wood upon such land, is not sufficient to authorize a recovery for the land upon which the wood was cut, if these were merely temporary trespasses and occupation of the land.

To the giving of which said instructions to the jury, the plaintiffs, by their counsel, objected, but the court overruled the objection, and the said instructions were by the court accordingly given to the jury. To the giving of which instructions, and each of them, the plaintiffs, by their counsel, instantly excepted. No further evidence was given in the cause by either party, and the plaintiffs pray the court to sign and seal this their bill of exceptions as a testimony in the cause, and it is done accordingly.

J. CATRON, [L. S.]
R. W. WELLS. [L. S.]

And afterwards, at the same term of said court, on the 28th day of April aforesaid, the plaintiffs filed a bond, of which the following is a copy:

Bond.

Know all men by these presents, that I, Michael S. Cerré, as principal, and Theodore Papin, Julius L. Cabanné, as securities, are held and firmly bound unto Samuel Massey in the sum of two hundred dollars, for the payment of which, well and truly to be made, they bind themselves, their heirs, &c., by these presents. Sealed with their seals, and dated this 28th day of April, 1846.

The condition of the above obligation is such, that whereas Audille Maxwell, Peter Menard, Bernice Chouteau, George H. Kennerly, *Alsire* Kennerly, Edmund Menard, Lancier Menard, Cyprian Menard, John Radford, and Sophie Menard, heirs of Amedee Menard, deceased, have sued out a writ of error, returnable to the next term of the Supreme Court of the United States, and directed to the circuit court of the United States for the district of Missouri, in order to reverse a judgment rendered by said circuit court, at the present April term of said circuit court, in a certain action of ejectment, in which the said Audille Maxwell, Peter Menard, Bernice Chouteau, George H. Kennerly, *Alsire* Kennerly, Edmund Menard, Lancier Menard, Cyprian Menard, John Radford, and Sophie Menard, heirs of Amedee Menard, deceased, are plaintiffs, and the said Samuel Massey is defendant. Now the condition of the above obligation is such, that if the said Audille Maxwell, Peter Menard, Bernice Chouteau, George H. Kennerly, Alsire Kennerly, Edmund Menard, Lancier Menard, Cyprian Menard, John Radford and

Sophie Menard, heirs of Amedee Menard, deceased, shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

MICHAEL S. CERRE, [L. S.]
THEODORE PAPIN, [L. S.]
JUL. L. CABANNE. [L. S.]

On which bond is the following endorsement:
Approved April 28th, 1846.

J. CATRON.

MISSOURI DISTRICT, *Set.*

The President of the United States, to the honorable the judges of the [L. S.] circuit court of the United States, for the district of Missouri, greeting.

Because in the records and proceedings, and also in the rendition of a judgment of a plea in said circuit court, between Audille Maxwell, Peter Menard, Berenice Chouteau, George H. Kennerly and Alsire his wife, Edmund Menard, Lancier Menard, Cyprien Menard, John Radford and Sophie his wife, heirs of Amedee Menard, demandants, and Samuel Massey, defendant, a manifest error hath happened to the great damage of said demandants, as by their complaint appears. We being will that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States; so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court on the second Monday of December next, at the city of Washington, the present seat of the National Government; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, the twenty-eighth day of April, in the year of our Lord eighteen hundred and forty-six.

Issued at office in the city of St. Louis, under the seal of said circuit court of the United States, for the district of Missouri, the day and year last aforesaid.

JOSEPH GAMBLE,
Clerk U S. C. C., Missouri district.

In obedience to the foregoing writ of error, I herewith transmit to the Supreme Court of the United States, at Washington city, a certified transcript of the record and proceedings of the circuit court of the United States for the district of Missouri, in said writ mentioned.

JO. GAMBLE,
Clerk U. S. C. C., Missouri district.

MISSOURI DISTRICT, *sct:*

The President of the United States, to Samuel Massey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Missouri, wherein Audille Maxwell, Peter Menard, Berenice Chouteau, George H. Kennerly, Alsire Kennerly, Edmund Menard, Lancier Menard, Cyprian Menard, John Radford, and Sophie Menard, heirs of Amedee Menard, deceased, are plaintiffs in error, and you, Samuel Massey, are defendant in error; to show cause, if any there be, why judgment rendered against the said heirs of Amedee Menard, deceased, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, one of the justices of the Supreme Court of the United States, the twenty-eighth day of April, in the year one thousand eight hundred and forty-six.

J. CATRON,
Asso. Jus. S. C. U. S.

We acknowledge due service of the foregoing citation, made this day, April 28th, 1846.

GAMBLE & BATES,
Attorneys of record for Samuel Massey.

MISSOURI DISTRICT, *sct:*

I, Joseph Gamble, clerk of the circuit court of the United States for the district of Missouri, certify, that the foregoing, (from page one to page forty-one, inclusive,) is a full and true transcript of the record and proceedings of said court, in a certain matter of controversy therein decided, between the heirs of Amedee Menard, deceased, plaintiffs, and Samuel Massey, defendant, as the same is of record and on file in my office.

In testimony whereof I hereto subscribe my name, and affix the seal of said court, at office, in the city of St. Louis, the second [L. S.] day of July, in the year one thousand eight hundred and forty-six.

JO. GAMBLE, *Clerk.*

Assignment of errors in the Supreme Court of the United States.

THE HEIRS OF AMEDEE MENARD,
vs.
SAMUEL MASSEY. } In error, *ss.*

And now, at this day, come the said plaintiffs in error, by their attorney, and say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the defendant in error, against the said plaintiffs in error; whereas, by the law of the land, the said judg-

ment ought to have been given for the said plaintiffs in error against the said defendant in error.

There is error also in this, to wit, that by the record aforesaid it appears that the court below instructed the jury that the plaintiffs in this case cannot recover against the defendant for any land embraced within the patents given in evidence by the defendant; whereas, by the law of the land, the court ought not to have so instructed the jury.

There is also error in this, to wit, that by the record aforesaid it appears that the court below instructed the jury that the plaintiffs could not recover in this case against the defendant, on acccount of any land within the plaintiffs' survey, without proof that the defendant at the commencement of this suit was in possession thereof; and the fact that the defendant had cut wood upon such land is not sufficient to authorize a recovery for the land upon which the wood was cut, if these were merely temporary trespasses and occupation of the land; whereas, by the laws of the land, the court ought not to so have instructed the jury.

Wherefore the said plaintiffs in error pray, that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by the occasion of the said judgment.

JOHN F. DARBY,
Attorney for plaintiffs in error.

Filed August 26th, 1846.